

Embracing Technology for Enhanced Efficiency and Access to Justice in the Legal Profession

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Technology as a Tool of Trade in Commerce & Dispute Resolution'

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Abstract

The COVID-19 pandemic has destabilized the traditional ways through which many professions operated and ushered in a new era of technology. One of the sectors that has been caught by the wind of change is the legal profession. The use of technology as a tool of access to justice has been embraced by the legal profession as a matter of necessity. Such technology includes the use of virtual court sessions, digital filing through the e-filing platform, electronic case management systems and digitization of land services. This has arguably marked the beginning of a worldwide trend that is likely to proceed post COVID-19.

Technology is revolutionizing the way businesses and various sectors operate. However, technology comes with its advantages and disadvantages. The use of technology in the legal profession has been hailed for promoting efficiency, cost effective and expeditious management of disputes. However, it has also come with its share of concerns such as data privacy and loss of employment due to automation of legal services.

The paper seeks to critically discuss the impact of technology on modern legal practice in Kenya. It seeks to reconcile the two opposing views by discussing both the advantages and disadvantages of technology in modern legal practice. The paper argues that the legal profession has more to gain than lose if it embraces technology as a tool of access to justice. The paper explores the various ways through which the legal profession can utilise legal technology to not only enhance access to justice but also improve the efficiency of law firms, the Judiciary and even law schools.

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It suggests practical ways through which the legal profession can embrace technology as a tool of trade in commerce and dispute resolution while also noting to address the concerns associated with the use of technology in the legal profession.

1. Introduction

Technology has impacted the nature and practice of the legal profession in Kenya and across the globe in the 21st century. Traditionally, legal practice in many parts of the world including Africa has been through physical processes such as in person court room attendances where different players including judicial officers, advocates and litigants participate in court processes¹. However, this position is no longer tenable due to rapid developments that have been witnessed at the global stage. The outbreak of the Coronavirus disease (COVID-19) pandemic destabilized the global economy which resulted in a ripple effect on many sectors including the legal profession². The preventive measures recommended by the World Health Organisation and imposed by most states such as physical distancing meant that it became difficult for most professions to operate from their traditional physical places³.

The legal profession was not spared by the effects of the COVID-19 pandemic. Due to the preventive measures adopted in most states, the physical attendance of employees at places of work such as law firms became difficult⁴. To address this challenge, law firms devised alternative methods of work such as remote working. The Judiciary in Kenya also acknowledged the effects of the COVID-19 pandemic and adopted alternative means of access to justice such as virtual court

¹ Could the Pandemic Be Grinding Justice to a Halt?' (*ALN Kenya*) <<https://www.africalegalnetwork.com/kenya/news/coronavirus-pandemic-grinding-justice-halt/>> accessed 4 April 2021; 'IBA - The Global Impact of the Covid-19 Pandemic on Commercial Dispute Resolution in the First Seven Months' available at <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=bd404ce3-3886-48a8-98f6-38eaaccd5f53> (accessed on 22/06/2022)

² Muigua. K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' available at <http://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-and-New-Frontiers-Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-Muigua-Ph.D-June-2020.pdf> (accessed on 22/06/2022)

³ Ibid

⁴ Meganne Tillay | February 28 and 2020 at 03:39 AM, 'Baker McKenzie Shuts down London Office Following Coronavirus Scare' (*Law.com International*) available at <https://www.law.com/international-edition/2020/02/28/baker-mckenzie-shuts-down-london-office-following-coronavirus-scare> (accessed on 22/06/2022)

sessions and electronic filing (e-filing) of court pleadings and documents. Conveyancing practice has also been disrupted through the digitization of services by the Ministry of Lands through the Ardhisasa platform. This has arguably disrupted the legal profession in an unprecedented manner⁵.

The disruptions caused by the COVID-19 pandemic have brought to light, the impact of technology on modern legal practice. Processes such as virtual court sessions, electronic filing and remote working heavily rely on technology for their success. It can thus be argued that the legal profession has adopted technology as a matter of necessity. This can also be attributed to the ascendancy of information technology, the globalization of economic activity, the blurring of differences between professions and sectors, and the increasing integration of knowledge⁶.

However, while legal technology has won critical acclaim for streamlining and improving the accuracy, efficiency and effectiveness of laborious processes within daily practice, it has also been criticized for the concerns it raises such as data privacy and loss of employment due to automation of legal services. The paper seeks to critically discuss the impact of technology on modern legal practice in Kenya. It seeks to reconcile the two opposing views by discussing both the advantages and disadvantages of technology in modern legal practice. The paper argues that the legal profession has more to gain than lose if it embraces technology as a tool of access to justice. It suggests practical ways through which the legal profession can embrace technology as a tool of trade in commerce and dispute resolution while also noting to address the concerns associated with the use of technology in the legal profession.

⁵ Muigua.K., 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' available at <http://kmco.co.ke/wp-content/uploads/2021/04/Embracing-Science-and-Technology-in-legal-education-for-Efficiency-and-Enhanced-Access-to-Justice-Kariuki-Muigua-April-2021.pdf> (accessed on 22/06/2022)

⁶ Kellogg Sarah, 'Cover Story: The Transformation of Legal Education' From Washington Lawyer, May 2011 available at <https://www.dcb.org/bar-resources/publications/washington-lawyer/articles/may-2011-legal-education.cfm> (accessed on 22/06/2022)

In this paper, ‘legal technology’ (Legal Tech) is used to mean the use of technology and software to provide and aid legal services⁷. Legal Technology applies technology and software to assist law firms in practice management, billing, big data, e-discoveries, predictive analytics, knowledge management and document storage⁸. While Legal Tech is meant to enable the bigger firms improve overall efficiency in order to adapt to a progressively popular agile working environment, it also allows smaller firms and sole practitioners to compete with the leading names in the field, giving them access to powerful research tools⁹.

This paper discusses these new developments and proceeds on the hypothesis that the legal profession has more to gain than lose if it continues to embrace technology as a tool of access to justice.

⁷ What Is Legal Technology and How Is It Changing Our Industry?’ (*The Lawyer Portal*, 29 January 2019) available at <https://www.thelawyerportal.com/blog/what-is-legal-tech-and-how-is-it-changing-industry> (accessed on 22/06/2022)

⁸ Business Models for Law Firms - p.Xel Marketing Agency’ available at <https://www.p-xel.co/business-models-for-digital-disruption-in-the-legal-industry> (accessed on 22/06/2022)

⁹ What Is Legal Technology And How Is It Changing Our Industry?’ available at <https://www.thelawyerportal.com/blog/what-is-legal-tech-and-how-is-it-changing-industry> (accessed on 22/06/2022)

2. Legal Practice in Kenya in the Modern Era: Challenges and Prospects

Since the introduction of the formal justice system in Kenya during colonialism, the legal profession has been a major player in facilitating access to justice¹⁰. However, the road towards access to justice in Kenya has been riddled with many obstacles including high fees of litigation, geographical location of courts, complexity of rules and procedures among others¹¹. These problems are compounded by economic turbulence due to societal and economic changes; adaption to new technology; compliance and ethical issues; and continuing professional development which directly impact on the legal profession especially among lawyers¹². The changing times and the above listed issues have made clients to continue to demand efficiency and responsiveness from their lawyers for less cost.

These challenges have been exacerbated by the COVID-19 pandemic which changed the landscape of the legal profession. The idea of remote working which was widely embraced as a result of the pandemic has not only changed the way lawyers view their approach to legal work but has also created an opportunity for them to weigh and reconsider how law firms will operate in the near future¹³. It is also argued that as law firms embrace the idea of working remotely due to the COVID-19 pandemic, there has been a growing likelihood that physical offices will look very

¹⁰ Muigua. K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' Op Cit

¹¹ Strengthening Judicial Reform in Kenya: Public Perceptions and Proposals on the Judiciary in the new Constitution, ICJ Kenya, Vol. III, May, 2002; See also Kariuki Muigua, *Avoiding Litigation through the Employment of Alternative Dispute Resolution*, pp 6-7, a Paper presented by the author at the In-House Legal Counsel, Marcus Evans Conference at the Tribe Village Market Hotel, Kenya on 8th & 9th March, 2012.

¹² Mboya, Apollo, 'The Bar: Challenges and Opportunities', in Ghai, Y.P. and Cottrell, J. eds., *The legal profession and the new constitutional order in Kenya*. Strathmore University Press, 2014, p. 242.

¹³ Samantha Stokes | April 27 and 2020 at 06:59 PM | The original version of this story was published on The American Lawyer, 'The Coronavirus Will Change the Legal Industry's Approach to Remote Work—But How?' (Law.com International) available at <https://www.law.com/international-edition/2020/04/27/the-coronavirus-will-change-the-legal-industrys-approach-to-remote-work-but-how-378-140355/> (accessed on 23/06/2022)

different in the future compared to what they are now¹⁴. These are some of the expected and unexpected effects of the COVID-19 pandemic on law firms where remote working is expected to take off as never before and firms will operate with more prudent and flexible financial models¹⁵.

Despite the challenges highlighted above, modern legal practice is considered one with staggering prospects. It has been argued that the strength of the 21st century lawyer lies in the understanding and use of Technology as a practice tool and area of core competence¹⁶. For a long time, the legal profession and lawyers in particular have been characterized as technology antagonists who are slow to change and wary of innovation¹⁷. However, this position is no longer tenable in modern legal practice. The practice of law has evolved from an era of using desktop phones, filing cabinets, and yellow legal pads to a period when all these have been replaced by laptops, tablets, cell phones, and other mobile devices and often virtual or cloud-based platforms¹⁸. This coupled with the challenges in legal practice that have emerged as a result of the COVID-19 pandemic means that technology has become part and parcel of the legal profession. The paper discusses the extent to which the legal profession has embraced technology in Kenya largely as a result of the COVID-19 pandemic. It further discusses the challenges and prospects associated with the use of legal technology.

¹⁴ Paul Hodkinson | May 05 and 2020 at 01:00 AM | The original version of this story was published on The American Lawyer, 'Welcome to the Law Firm Office of the Future: Smaller, Higher-Tech and One-Way' (Law.com International) available at <https://www.law.com/international-edition/2020/05/05/smaller-higher-tech-and-one-way-welcome-to-the-law-firm-office-of-the-future/> (accessed on 23/06/2022)

¹⁵ Ibid

¹⁶ Kingsley Ugochukwu Ani, 'The 21st Century Lawyer: Challenges and Prospects' (Social Science Research Network 2018) SSRN Scholarly Paper ID 3270279 <https://papers.ssrn.com/abstract=3270279> (accessed on 23/06/2022)

¹⁷ Ready or not: artificial intelligence and corporate legal departments' available at <https://legal.thomsonreuters.com/en/insights/articles/artificial-intelligence-ai-report> (accessed on 23/06/2022)

¹⁸ Gaffney Nick, 'Law Practice Management: Transforming a Law Practice with Technology' available https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2017/september-october/law-practice-management-transforming-law-practice-technology/ (accessed on 23/06/2022)

3.0 Progress Towards Embracing Technology as a Tool of access to Justice in the legal Profession in Kenya

3.1 Virtual Court Infrastructure

The outbreak of the COVID-19 pandemic severely affected the administration of justice. Physical court sessions were no longer tenable due to the need to avoid the risk of transmission of COVID-19 and ensure the health of judicial officers, lawyers and litigants¹⁹. At the height of the pandemic, the Judiciary in Kenya announced a scale down of court activities throughout the country due to the concerns created by the outbreak of the pandemic²⁰. Courts were seen as possible hotspots for the spread of the pandemic owing to the large crowds of persons including judicial officers, advocates, court staff and litigants who are normally part of the day to day court operations²¹. This forced the judiciary in most countries including Kenya to embrace technology in order to continue administering justice in the midst of the pandemic.

Owing largely to the impact of the COVID-19 pandemic, the Judiciary in Kenya has enhanced the use of technology in judicial proceedings including the use of e-filing; e-service of documents; digital display devices; real time transcript devices; video and audio conferencing; digital import devices and electronic delivery of rulings and judgments²². This represents an important milestone towards embracing technology as a tool of access to justice in the legal profession.

¹⁹ Virtual Hearings: The Way Forward in the UK in Uncertain Times’
<https://www.dentons.com/en/insights/alerts/2020/march/29/virtual-hearings-the-way-forward-in-the-uk-in-uncertain-times> (accessed on 23/06/2022)

²⁰ Muigua. K., ‘Virtual Arbitration Amidst Covid19 : Efficacy and Checklist for Best Practices’ available at <http://kmco.co.ke/wp-content/uploads/2020/05/Virtual-Arbitration-Proceedings-Amidst-COVID-19-Efficacy-and-Checklist-for-Best-Practices69523-Revised.pdf> (accessed on 23/06/2022)

²¹ Ibid

²² Kenya Law: Electronic Case Management Practice Directions, 2020’ available at <http://kenyalaw.org/kl/index.php?id=10211> , Rule 6, (accessed on 23/06/2022)

It has been rightly pointed out that the COVID-19 pandemic may prove a catalyst for courts to embrace technology and reduce their reliance on in-person hearings and hard copy documents, particularly for case management purposes, even after the pandemic²³. This calls for the continued use of legal technology post COVID-19 pandemic period as well as infrastructural investment to ensure that the processes run smoothly and efficiently²⁴. It also calls for equipping the courts and all registries with the relevant infrastructure through setting up some permanent virtual courts and tribunals²⁵. Embracing virtual court technology is likely to be an essential component of access to justice both now and in the future.

3.2 Digitization of Legal Services

There have been significant strides towards digitization of legal services in order to enhance efficiency and service delivery. Key among these services include land registration. The Land Registration Act mandates the Registrar to maintain the register of lands and other related documents in a secure, accessible and reliable format including electronic files²⁶. The Act further requires the Registrar to make information in the register accessible to the public by electronic means²⁷.

To give effect to the above provisions, the Cabinet Secretary for Land and Physical Planning formulated the Land Registration (Electronic Transactions) Regulations, 2020 vide a legal notice²⁸.

The regulations mandate the Chief Land Registrar to maintain an electronic land registry²⁹. They

²³ The Remote Courtroom: Tips and Tricks for Online Hearings' available at <https://www.ashurst.com/en/news-and-insights/legal-updates/the-remote-courtroom-tips-and-tricks-for-online-hearings> (accessed on 23/06/2022)

²⁴ Muigua.K., 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' Op cit

²⁵ Ibid

²⁶ Land Registration Act, No.3 of 2012, S 9 (1) (b)

²⁷ Ibid, S 10

²⁸ The Land Registration (Electronic Transactions) Regulations, 2020, Legal Notice 130, Government Printer, Nairobi

²⁹ Ibid, Regulation 4

further provide that all registry transactions under the Land Registration Act shall be carried through the electronic registry³⁰. This has facilitated the digitization of land records through the creation of a Document Management System (DMS) for all approved physical development plans³¹. Further, it has resulted in the development of a system for the management for land titles documents that involves scanning, indexing and archiving deed files and land rent cards among other digital processes.

In addition, the Ministry of Lands and Physical planning and the National Land Commission have jointly developed the Ardhisasa platform that allows citizens, other stakeholders and interested parties to interact with land information held and processes undertaken by Government³². The platform is aimed at enhancing the security of land records, speeding up land transactions, efficient allocation of settlement files, achieving reasonable timelines in all settlement transactions and curbing fraud and corruption³³. This has contributed in reducing human interactions, delays and inconveniences that characterized manual registries.

The digitization of legal services has also been facilitated via other platforms such as the Kenya Law platform by the National Council for Law Reporting that offers access to laws of Kenya, bills pending in Parliament, judgments and rulings, publications among other services³⁴. Further, the eCitizen platform offers a gateway to most government services some which were exclusively undertaken by lawyers such as the registration of companies and businesses³⁵. Digitization of legal services has changed the landscape of legal practice in Kenya. While the move has been praised

³⁰ Ibid, Regulation 6

³¹ ‘Digitization of Land Records in Kenya’ available at <https://mmsadvocates.co.ke/digitization-of-land-records-in-kenya/> (accessed on 23/06/2022)

³² What is Ardhisasa, available at <https://ardhisasa.lands.go.ke/home> (accessed on 23/06/2022)

³³ Ibid

³⁴ Kenya Law, available at <http://kenyalaw.org/kl/> (accessed on 23/06/2022)

³⁵ eCitizen, available at <https://www.ecitizen.go.ke/ecitizen-services.html> (accessed on 23/06/2022)

for enhancing efficiency and expeditiousness in the delivery of legal services, it has also been faced with its fair share of challenges as shall be discussed.

4.0 Challenges and Concerns with the use of technology as a tool of access to justice in the legal profession

4.1 Data Privacy/Information Security Concerns

The use of legal technology such as videoconferencing, e-filing and e-service of documents creates data privacy/information security concerns. The technological systems supporting these processes such as e-filing platform and emails may be subject to cyberattacks such as hacking³⁶. In such cases, unauthorized persons may access the system and engage in unwarranted practices such as stealing of information, deleting information or sending unwanted information to the detriment of some parties³⁷. It is thus important to address the cybersecurity concerns associated with the use of legal technology in order to ensure the success and efficiency of legal technology.

4.2 Challenges in using legal technology

The fast pace of technological revolution could result in the legal profession lagging behind in keeping up with changes. This can be seen through the use of old technologies in some law firms such as old versions of desktops and hard drives used for storage of data at the expense of modern technologies such as laptops and cloud based storage systems. Further, the ability of judicial officers and lawyers to effectively use legal technology is also a challenge³⁸. There have been cases

³⁶Ngotho, P., "Expediting Ad Hoc Arbitrations through Emails: the Experience of a Kenyan Arbitrator," (2015) 1 Alternative Dispute Resolution, pp 133-134.

³⁷ Ibid

³⁸ Kenya Institute for Public Policy Research and Analysis (KIPPRA), 'Leveraging on Digital Technology in Administration of Justice' available at <https://kippra.or.ke/leveraging-on-digital-technology-in-administration-of-justice/> (accessed on 24/06/2022)

of judicial officers and lawyers having challenges in joining virtual court sessions or using the e-filing platform³⁹. The success of legal technology thus lies with judicial officers and lawyers possessing the requisite skills and keeping up with technological revolution in order to enhance efficiency.

4.3 Risk of Technological Failure

Since processes such as virtual court sessions rely on internet connectivity, affordable and secure internet connectivity is crucial for the success of the process. The conduct of virtual court proceedings in Kenya has been faced with challenges such failure of video links or poor internet connectivity that hinders the success of the process⁴⁰. It further becomes difficult to address such technical issues since participants would be in different locations⁴¹. In criminal cases being conducted virtually where accused persons do not have strong internet connection, their ability to fully defend themselves may be compromised undermining the right of access to justice⁴². Further, these challenges may be compounded by poor or limited electrical connectivity. The success of legal technology is thus predicated upon the ability to maintain the efficient working of such systems.

4.4 Credibility concerns during examination of witnesses

Where witnesses are examined virtually, there are concerns that the loss of in-person observation will impair a court's ability to assess the credibility and strength of the evidence especially during cross examination⁴³. One of the advantages of in person court hearings is that a court is able to

³⁹ Ibid

⁴⁰ Walker.J., Virtual Hearings: An Arbitrator's Perspective, available at <https://int-arbitrators.com/wpcontent/uploads/2020/03/Virtual-Hearings-An-Arbitrators-Perspective.pdf> (accessed on 24/06/2022)

⁴¹ Ibid

⁴² Ibid

⁴³ Walker.J., Virtual Hearings: An Arbitrator's Perspective, Op Cit

discern the credibility of a witness by observing his/her body language, facial expressions and tone. Assessment of such non-verbal cues is essential in determining the credibility of a witness⁴⁴. This purpose may be defeated through the use of legal technology such as virtual court proceedings a situation that could potentially undermine the right of access to justice.

4.5 Loss of Jobs

There are concerns that embracing legal technology could result in loss of jobs due to automations of legal services. The automation of land services through the electronic land registry and Ardhisasa platforms can potentially result in loss of business for conveyancing advocates and clerks who conducted services offered by such platforms. Further, services offered by e-citizen platform such as registration of businesses and companies can be done by any person potentially resulting in loss of employment for lawyers who initially provided such services.

4.6 Costs

The costs associated with the use of legal technology could result in a large majority of the population being locked out of the justice system. The use legal technology relies on devices such as computers, laptops, smartphones and internet connectivity that may be out of reach for poor citizens. It is thus important to take into account such concerns in the move towards embracing legal technology in order to ensure that the right of access to justice for all Kenyans is upheld.

⁴⁴ Ibid

5.0 Way Forward: Embracing Technology for Enhanced Efficiency and Access to Justice in the Legal Profession

5.1 Investing in Legal Technology

The challenges brought about by the COVID-19 pandemic have brought into focus the need to embrace technology as a tool of access to justice in the legal profession⁴⁵. Legal technology such as the use of virtual court sessions has now been embraced by the judiciary. Further, law firms have embraced legal technology through aspects such as remote working. While this technology has been widely adopted due to the challenges brought about by the COVID-19 pandemic, there is need for both the judiciary and law practitioners to continue embracing legal technology post COVID-19⁴⁶. This necessitates investment in legal technology in order to enhance efficiency, cost effectiveness and expeditiousness in the administration of justice⁴⁷.

Investment in technology is also crucial in helping lawyers and law firms to reap from the fruits of globalization and enhance their appeal at the global stage. Lawyers can use the technology to tap into the ever growing international Alternative modes of Dispute Resolution such as international arbitration, mediation and Online Disputes Resolution (ODR) especially in the face of rapidly growing networking and borderless legal practice, with the introduction of diverse social media platforms that allow interconnectivity beyond the national boundaries and enabling cross-border relationships between clients and their lawyers and law firms amongst themselves⁴⁸. They

⁴⁵ Virtual Hearings: The Way Forward in the UK in Uncertain Times available at <https://www.dentons.com/en/insights/alerts/2020/march/29/virtual-hearings-the-way-forward-in-the-uk-in-uncertain-times> (accessed on 27/06/2022)

⁴⁶ Muigua.K., 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' Op cit

⁴⁷ Ibid

⁴⁸ Emmanuel Oluwafemi Olowononi and Ogechukwu Jennifer Ikwanusi, 'Recent Developments in 21st Century Global Legal Practice: Emerging Markets, Prospects, Challenges and Solutions for African Lawyers' (2019) 5 KIU Journal of Social Sciences 31; Samuel Omotoso, 'Law, Lawyers And The Social Media In The 21st Century: Challenges And Prospects' Law, Lawyers And The Social Media In The 21st Century: Challenges And Prospects available at

should tap into the tremendous growth of international trade, interstate deals, bilateral and multilateral treaties, where legal practice is increasingly becoming global and smart practitioners must therefore up their game with international best practices as with the advent of internet, telecommunication systems, clients are no longer limited to lawyers in their regions nor are they limited to the need for legal services within their jurisdiction⁴⁹. Investment in legal technology is likely to enhance the role of the judiciary in the administration of justice and promote the success of law firms.

5.2 Safeguarding the Privacy of Data

The use of legal technology is associated with certain risks and challenges as far as data is concerned such as cyber-attacks and data breaches⁵⁰. There is need for the legal profession to invest in data protection infrastructure in order to enhance efficiency and protect clients' data regardless of the status of the local data protection laws⁵¹. This may also necessitate relooking into the existing laws on data protection in order to enhance their effectiveness⁵². Further, it is essential to equip players in the legal profession such as judges and lawyers with necessary skills and knowledge regarding data protection including information security management⁵³. Through this, it becomes possible to guarantee the privacy, confidentiality and integrity of data available to legal practitioners.

https://www.academia.edu/40663364/LAW_LAWYERS_AND_THE_SOCIAL_MEDIA_IN_THE_21ST_CENTURY_CHALLENGES_AND_PROSPECTS (accessed on 27/06/2022)

⁴⁹ Ibid

⁵⁰ Katharine Perekslis, 'Four Strategies to Navigate Data Privacy Obligations for Compliance, Litigation, and E-Discovery Professionals' (Law.com) available at <https://www.law.com/native/?mvi=7bd540437dde4b60991f35c257adc521> (accessed on 27/06/2022)

⁵¹ Muigua.K., 'Embracing Science and Technology in Legal Education for Efficiency and Enhanced Access to Justice' Op cit

⁵² Ibid

⁵³ What Is Information Security Management?' (*Sumo Logic*) available at <https://www.sumologic.com/glossary/information-security-management/> (accessed on 27/06/2022)

5.3 Rolling Out E-Literacy Training/Education

As the legal profession continues to embrace technology, there is need for sustained and enhanced e-literacy training on the efficient use of such technology. The training should target all players in the legal profession including judicial officers, lawyers and staff. The Judiciary can liaise with relevant stakeholders including the government and technology firms in order to facilitate such training. Such training should also target law students whereby law schools should design relevant courses to be included in their curricula in order to arm them with relevant skills. The training should also target the public in order to enable citizens have meaningful interaction with the justice sector through platforms such as the e-filing portal⁵⁴. Such training can enhance the capacity of judicial officers and lawyers and contribute towards enhanced use of legal technology. Further, staff such as law clerks should also be trained on the use of legal technology in order to prevent the risk of losing jobs by ensuring that they are adept with new developments and are able to discharge their roles through the use of technology.

5.4 Capacity Building

With the ongoing investment in physical infrastructure to enhance the use of technology in the administration of justice, there is need to put in place legal and institutional frameworks to not only facilitate the uptake of technological developments but also to ensure that there is an effective regulatory framework to deal with numerous challenges that arise from legal technology⁵⁵.

Institutions such as the Law Society of Kenya should enhance their capacity and that of lawyers in legal technology through measures such as incorporating training in Information Communication Technology (ICT) in its Continuing Professional Development (CPD) training.

⁵⁴ Muigua, K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' Op Cit

⁵⁵ Ibid

Further, legal institutions such as the judiciary and law firms should be collaborative, diverse, international, technologically friendly, and entrepreneurial in order to enhance their capacity in the use of legal technology⁵⁶.

5.5 Enhanced e-filing and service of Court Pleadings and Documents

The judiciary should consider fully adopting and shifting to electronic systems for filing documents. This would save both law firms and courts enormous resources in terms of finances and storage facilities for the hardcopy documents. It would also enhance efficiency in terms of accessibility and review of the documents as both sides can access the documents from anywhere. All that is required is enhancing the security of such data to safeguard privacy. This can be achieved through investing in modern infrastructure as well as offering information management training to the staff charged with such.

5.6 Amendment of Remuneration order to guide on Legal fees payment by clients

The traditional remuneration technique by lawyers generally entail billing for time and services offered based on the Advocates Remuneration Order. However, there is need to implore members of the Bar to transition away from the traditional billable time and services system to alternative billing strategies by understanding that apart from “legal services” and “time”, lawyers are also selling knowledge, which may include fixed, results based, hourly, graduated, or any such combination⁵⁷. This situation is further enhanced by legal technology that allows lawyers to serve clients or attend court virtually without the need for physical meetings. This therefore creates a

⁵⁶ Kellogg Sarah, ‘Cover Story: The Transformation of Legal Education’ From Washington Lawyer, May 2011 available at <https://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/may-2011-legal-education.cfm> (accessed on 27/06/2022)

⁵⁷ Mboya, Apollo, ‘The Bar: Challenges and Opportunities’, Op Cit.

need to consider amending/revising the current Remuneration Order so as to accommodate these new possibilities.

5.7 A Possibility for Virtual Law Firms in Kenya

The COVID-19 pandemic resulted in the closure of some law firms law firms with others allowing employees to work from home a situation that still persists at the moment. This situation has seen cases where some law firms have decided to close their physical offices and turning to virtual firms where their employees will permanently work from home⁵⁸. There is a possibility that this trend will continue with lawyers turning to virtual law firms due to the flexibility and cost effectiveness associated with running such firms. It is thus argued that for the profession to stay relevant and thrive, lawyers should consider investing in modern legal practices such virtual law firms in order to reap from the benefits of technology⁵⁹.

However, the growth of virtual law firms will inevitably come with certain challenges including those of regulation. The regulators of provision of legal services should adequately prepare to respond to the impact of technology on law practice and lawyer regulation, including the growth in cloud computing, virtual law offices, and outsourcing of legal services⁶⁰.

⁵⁸ Meganne Tillay | May 27 and 2020 at 10:13 AM, 'Slater & Gordon to Close London Office, Staff to Work From Home Permanently' (Law.com International) <https://www.law.com/international-edition/2020/05/27/slater-and-gordon-to-close-london-office-staff-to-work-from-home-permanently/?cmp_share> accessed 3 June 2020; Meganne Tillay, Simon Lock | May 29 and 2020 at 08:38 AM, 'Slater & Gordon Working From Home: How Will It Work?' (Law.com International) available at <https://www.law.com/international-edition/2020/05/29/slater-gordon-working-from-home-how-will-it-work> (accessed on 27/06/2022)

⁵⁹ Mboya, Apollo, 'The Bar: Challenges and Opportunities' Op Cit

⁶⁰ Laurel S Terry, Steve Mark and Tahlia Gordon, 'Trends and Challenges in Lawyer Regulation: The Impact of Globalization and Technology' (2011) 80 Fordham L. Rev. 2661, p. 2662.

5.8 Globalization of Legal Services through Enhanced Collaboration Between Local and Foreign Law Firms

Some law firms in Kenya have already tapped into the benefits of legal technology by collaborating with other firms in Africa and beyond⁶¹. Examples of such law firms in Kenya include Bowmans, Iseme Kamau & Maema (IKM) Advocates and Dentons Hamilton Harrison & Mathews that have that have expanded their reach in Africa and beyond through alliances with other firms and opening offices in foreign countries. Such alliances give law firms a global appeal with the ability to access a wider clientele where they are able to tap into the benefits of technology to serve clients across different jurisdictions⁶². There is need for more local firms to consider the idea in order to broaden their services and serve clients across different jurisdictions.

6.0 Conclusion

Technology has had a significant impact on the nature and practice of law. The legal profession which has hitherto been slow to adapt to change has been forced to embrace technology as a matter of necessity. This need was laid bare by the COVID-19 pandemic which changed the landscape of legal practice in many countries including Kenya. There is need for lawyers and law firms to embrace technology for them to remain relevant in the face of technological developments and globalization. The Judiciary is further called upon to embrace technology in order to enhance efficiency and access to justice for all. Despite the challenges posed by technology, effective adoption of legal technology can address such challenges and be a game changer in the quest

⁶¹ Karangizi, S., 'Future Proofing the Legal Profession in East Africa | ALSF' available at <https://www.aflsf.org/director-article/future-proofing-legal-profession-east-africa> (accessed on 27/06/2022)

⁶² Muigua, K., 'Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice' Op Cit

towards access to justice in an efficient, affordable and expeditious manner. Embracing technology for enhanced efficiency and access to justice in the legal profession is an achievable dream.

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